

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNIE RAY HAWKINS,	§
	§ No. 393, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0411002216A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 29, 2010

Decided: November 3, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of November 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Donnie Ray Hawkins, filed an appeal from the Superior Court's May 26, 2010 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in 2005, a Superior Court jury found Hawkins guilty of 2 counts each of Possession of a Deadly Weapon During the Commission of a Felony, Unlawful Imprisonment in the Second Degree, Aggravated Menacing and Offensive Touching and 1 count each of Assault in the Third Degree, Disorderly Conduct, Endangering the Welfare of a Child, Driving After Judgment Prohibited and Driving Under the Influence of Alcohol. He was sentenced to a total of 44 years of Level V imprisonment. This Court affirmed Hawkins's convictions on direct appeal.² Hawkins subsequently filed 2 unsuccessful motions for postconviction relief.

(3) On September 4, 2009, the Superior Court corrected Hawkins's original sentencing order because it mistakenly referred to 3 years of mandatory time for each count of Possession of a Deadly Weapon During the Commission of a Felony. The correction of the sentencing order had no substantive effect on any of Hawkins's sentences. Nevertheless, Hawkins, through counsel, requested that he be given an opportunity to appear in open

¹ Supr. Ct. R. 25(a).

² *Hawkins v. State*, Del. Supr., No. 257, 2005, Ridgely, J. (July 11, 2006) (*en Banc*).

court in connection with the correction of the sentencing order and the Superior Court granted his request.

(4) Hawkins appeared before the Superior Court judge on March 12, 2010, with counsel present. The judge explained the correction of the sentencing order to Hawkins. Hawkins's counsel attempted to argue for a reduction of his sentence, but was reminded by the judge of the limited purpose of the proceeding. No new order issued as a result of the proceeding.³ Hawkins then filed his third postconviction motion, alleging that his counsel provided ineffective assistance at the March 12, 2010 proceeding, because she did not argue for leniency on his behalf.

(5) The record in this case reflects that the sole purpose for bringing Hawkins into court on March 12, 2010 was to provide an explanation to Hawkins regarding the basis for correcting the original sentencing order and to provide him with an opportunity to ask questions regarding that limited issue. There was no re-sentencing and Hawkins's counsel was not permitted to argue for leniency.

(6) In order to prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's

³ Hawkins's counsel has filed an appeal from that proceeding in No. 146, 2010 pursuant to Supreme Court Rule 26(c).

errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁴ Hawkins cannot demonstrate that his counsel provided ineffective assistance at the March 12, 2010 proceeding because she was not permitted to present argument on his behalf.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).